

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF OPTOMETRISTS

IN THE MATTER OF THE  
SUSPENSION OR REVOCATION OF  
THE LICENSE OF

SIDNEY ALBERT, O.D.  
LICENSE NO. OA 00213500

TO PRACTICE OPTOMETRY  
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER  
OF DISCIPLINE

This matter came before the New Jersey State Board of Optometrists upon information that the respondent has failed to complete fifty (50) credits of continuing education in approved optometry courses during the period of May 1, 2003 to April 30, 2005, as required for the 2005-2007 biennial license renewal pursuant to N.J.S.A. 45:12-9.3 and N.J.A.C. 13:38-4.5. Based upon information received and which the Board has reviewed, the following preliminary findings are made:

FINDINGS OF FACT

1. Respondent is an optometrist in the State of New Jersey and has been a licensee at all times relevant hereto.
2. On April 28, 2005 the respondent returned his completed application for renewal of license as an optometrist in the State of New Jersey. (Exhibit A, a copy of the renewal application is attached and made a part hereto.) and
3. The respondent affirmed on the renewal application for the 2005- 2007 renewal period that he will have completed the required continuing education by the period preceding the established renewal date of April 30, 2005.

4. On the 30<sup>th</sup> day of June, 2005, the Board of Optometrists initiated a random audit of renewal applications for the 2005-2007 period, asking licensees to submit proof with regard to the satisfaction of continuing education requirements for the biennial renewal period, i.e., fifty (50) credit approved hours which includes twenty-five (25) credits in general optometric education and twenty-five (25) credits in courses or programs classified as therapeutic pharmaceutical agents ("TPA").

5. On or about July 27, 2005 Respondent submitted correspondence to the Board indicating that he had urologic problems and thus was not able to attain the full amount of continuing education credits required for the renewal of his license to practice optometry. A review of the documentation submitted supported that Respondent obtained thirty four (34) continuing education credits within the April 30, 2005 time period. (Exhibit B is a copy of Respondent's July 27, 2005 letter and attached to and made a part hereof.).

#### CONCLUSIONS OF LAW

1. Respondent has not satisfied the requirements of N.J.S.A. 45:12-9.3 and N.J.A.C. 13:38-7.3 with regard to the completion of the appropriate number of approved continuing education credit hours and is therefore subject to sanctions pursuant to N.J.S.A. 45:1-21(h), failure to comply with the provisions of an act or regulation administered by the Board, which constitutes grounds for suspension or revocation of any certificate, registration or license, and grounds for sanction pursuant to N.J.S.A. 45:1-25.

2. Respondent attested to the completion of fifty (50) continuing education credits by April 30, 2005 on the biennial renewal application but has submitted information indicating that he failed to obtain sixteen (16) of the requisite continuing education credits required for renewal of his license to practice optometry. Therefore, respondent is subject to sanctions pursuant to N.J.S.A. 45:1-21(b) in that he has engaged in the use or employment of dishonesty, deception or

misrepresentation, which constitutes grounds for the suspension or revocation of any certificate, registration or license, and grounds for sanctions pursuant to N.J.S.A. 45:1-25.

3. Respondent attested on his renewal application that he did not have a medical condition that limits his ability to practice his profession.

### DISCUSSION

Based on the foregoing findings and conclusions, a Provision Order of Discipline suspending respondent's license to practice Optometry in the State of New Jersey was entered on October 19, 2005 and a copy was served on the respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless respondent requested a modification or dismissal of the stated Finding of Fact and Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

On December 19, 2005 the Board received correspondence from Arlene Grosse, P.T. confirming that the respondent's wife has been diagnosed with severe scoliosis and is unable to ambulate without the assistance of her husband. Ms. Grosse also explained that respondent's wife is dependent upon him for transportation to and from the physical therapy facility and that she received comprehensive therapy from August 24, 2005 until the present which interfered with Respondent's availability to attend continuing education courses. The Board also received a letter from Michael Ardito, M.D. requesting a waiver of the outstanding continuing education credits owed by the Respondent as he was unable to complete his required continuing education credits within the specified time period due to his own illness and in part to his obligation to provide care for his elderly wife and sister. Dr. Ardito further stated that Respondent's illness did not impact

or impair Respondent's ability to care for his patients.

On or about December 27, 2005 the Board received documentation supporting the completion of an additional thirteen (13) credits completed by the respondent which was within the biennial renewal period. Therefore, the respondent is short three credits at present.

Upon review of all the available information, the Board finds that there are mitigating medical circumstances which resulted in the respondent's inability to complete the required amount of continuing education credits within the specified time period. The Board accepts the Respondent's explanation but requires that the three (3) outstanding continuing education credits must be completed by the licensee. Based on the circumstances presented the Board finds that the respondent failed to complete the required amount of continuing education courses within the biennial period in violation of N.J.S.A. 45:12-9.3 but agrees to waive the one thousand (\$1000.00) dollar penalty imposed for this violation based on the mitigating circumstances. The penalty in the amount of one thousand (\$1000.00) dollars for violation of N.J.S.A. 45:1-21(b) remains unchanged.

THEREFORE, IT IS on this 15<sup>th</sup> Day of February, 2006

ORDERED:

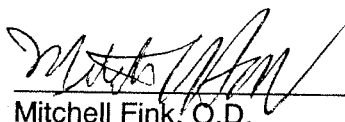
1. Respondent shall pay a civil penalty of one thousand dollars (\$1,000.00) pursuant to N.J.S.A. 45:1-25. This amount consists of \$1000.00 for violation of N.J.A.C. 45:1-21(b) for falsely affirming on the license renewal application that the continuing education credits were completed in full in the specified time frame. Payment is to be remitted by means of a certified check or money order, payable to the New Jersey State Board of Optometrists. Such payment is to be sent to the Board of Optometrists, attention Susan Gartland, Executive Director at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101, no later than ten (10) days from the date

that the within Order is finalized.

2. Respondent must submit proof of having completed the requisite fifty (50) hours of continuing education credits within sixty (60) days of the date of the receipt of the Final Order. Thus, Respondent shall submit additional proofs to support obtaining three (3) continuing education credits that he is short within sixty (60) days of the receipt of the Final Order. **These continuing education credits are NOT to be used to renew respondent's license for the 2005-2007 renewal period.**

NEW JERSEY STATE BOARD  
OF OPTOMETRISTS

By:

  
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Mitchell Fink, O.D.  
President